The peculiar rules based on old case law and on the historical technicalities of English land tenures, which are learnedly illustrated by Mr. Williams, present few points of contact with the growth and character of forest rights in India or elsewhere[4].

It is not surprising, therefore, that it is only occasionally that a particular point decided, or a particular principle admitted in the English text-books, can be quoted to any purpose.

I have dwelt at some length on this subject, because it might strike some readers as strange that I should so often refer to foreign books, and so seldom to English ones, which would be more accessible to students. The reason is now, I hope, clear. If more is wanted, I would ask the reader to look through my chapter on forest rights and their settlement, so as to see the sort of questions on which we seek for information; if then he will read "Williams on Rights of Common," he will not then fail to understand how different are the objects aimed at it by either.

SECTION III.—TO WHAT LANDS DOES THE SPECIAL LAW OF FOREST APPLY?

§ 1.—*Definition of forests.*

The question with which I have headed this section may strike the reader, at first blush, as superfluous. "Forests," he will say, "are of course the proper subjects of forest law." But in India it is not every piece of land, which could be called "forest" in an ordinary and popular sense, that needs to be brought under forest law. It was therefore natural, on making the first essay in forest legislation, to try and frame a definition that would cover all the lands likely to be wanted for management as forests.

[4] If we were to attempt to apply in our Indian practice the principles of pleading in cases of claims to rights of common, laid down by Mr. Joshua Williams, it is probable that about two-thirds of all the "Forest Rights," which we are settling and regulating under the Forest Act, would be held inadmissible at law. What would become of Indian forest rights, if they could not be claimed by custom (Williams, 194), nor by fluctuating bodies as "the inhabitants of a place" (*id.*, p. 13), nor if indefinite (*id.*, p. 191), nor if unreasonable (*id.*, p. 191)? The English law would not step in to define or regulate such rights: it would simply refuse to allow them to be well founded.

This was exactly what was thought when the first Forest Act was drawn up in 1865. The old Government Forest Act (VII of 1865) actually contained a definition :—

"Government forest" was defined to be "land covered with trees, brushwood or jungle[5] declared to be Government forest under the Act." But it is obvious that such a definition is imperfect and unsatisfactory[6].

Nor do any of the continental laws help us with definitions which we might adopt or modify, because their way of dealing with the matter does not require a definition of forests, as will presently become clear[7].

[5] It will be observed that the term "jungle" is itself obscure. If it is difficult to say what is "forest," still more so is it difficult to say what is "jungle." Speaking generally, I should say that jungle included all waste that was not merely grass land, but perhaps the tall grass savannahs of the Tarai, Burma, &c., would be called "jangal." "Jangal" also, I am told, means all natural growth on land before it is brought under cultivation.

[6] Indeed, it is mischievous: since if a forest is land covered with trees, &c., *and* declared under the Act, it would follow that a tract of land not so covered, even if it were declared, would not be legally a forest, or subject to the law. It may happen that land perfectly bare, or covered only with grass, is taken up for a large plantation which can only be gradually completed; nevertheless, it would be important to have the whole area under forest law from the beginning.

[7] The fact is that, as a matter of abstract possibility, no definition of forest, at any rate suitable for legal purposes, has ever been framed. Several books give a *description*, which is not a definition; such as that "a forest is a whole consisting of soil, climate and certain growths, &c." (see Frochot: Traité Générale, p. 99). In the article (Forêts) in the *Repertoire de Jurisprudence Général*) of Dalloz (Vol. 25 Paris, 1849), forests are defined as "lands whose principal products consist of timber trees or firewood." "Lands" (it is added) "which, though bearing trees, give, as their chief product, fruits hanging from the branches, are (not forests but) orchards." It is obvious how very insufficient this would be, at any rate for legal purposes, in India.

In early historical times a forest was looked upon as a place where beasts of the chase were protected. The writer last quoted says that some have tried to derive the word forest (*foresta*) from the words "*ubi fera stat*" or "*ferarum statio,*" the place of wild beasts.

Manwood (3rd edition, 1665 A.D.) gives a similar account of forests, and goes on to say that forest law is for the protection of the game. This was indeed the purpose of all *early* forest laws. (See *Die Staats Forstwirthschaftslehre*—von Berg, Leipzig, 1850, pp. 1—3). See also a specimen of forest law of the 11th century which I translated in the "Indian Forester" (Vol. IV, p. 161).

Ultimately, however, it was perceived that even if we had a definition, it would not help us really to apply our law, under the conditions in which interests and rights in lands actually exist in India. This will become clear on a little further reflection.

Even if we knew that beyond question such and such lands were *forests*, it is clear that the law would not be applied to every kind of forest property: we should still require to know what was the precise interest or right by which each "forest" was held, before we could say whether it ought to be under the law or not. And this we cannot, without a special enquiry and adjustment of claims, determine. No doubt some "forest" would be unquestionably Government property, and of course could be subjected to the

The passage from Manwood is as follows:—

"A forest is a certain territory of woody grounds and fruitful pastures, priviledged for wild beasts and fowls of forest, chase and warren, to rest and abide in the safe protection of the king, for his princely delight and pleasure; which territory of ground so priviledged is meeted [meered] and bounded with unremoveable marks, meets [meers] and boundaries either known by matter of record, or else by prescription; and also replenished with wild beasts of venery or chase, and with great coverts of vert for the succour of the said wild beasts to have their abode in. For the preservation and continuance of which said place, together with the vert and venison, there are certain particular laws, priviledges and officers belonging to the same meet for that purpose, that are only proper unto a forest, and not to any other place" (p. 41). ("Vert" means the "green" grass, trees and bushes of the forest.) The edition of 1665 uses the term "meet" and "meeted." In the quotation in Williams probably from the earlier edition, it is "meere" and "meered;" both terms refer to boundary marks.

But it seems that at an early date the value of forests for something besides game became evident. The importance of wood to the public, and to the navy above all things, became recognised, as well as the value of those rights of pasture, &c., which the people had in the forests. As long as the idea of game was uppermost, lands were "afforested," and rights ruthlessly suppressed for no other reason than they interfered with the preserves. Then came a reform, in which the rights were again restored. In England a "charta de foresta," passed in the 9th year of the reign of Henry III, promised that all estates afforested by Henry II should be "viewed" and rights restored; and very soon the law of rights became understood. "In England," says Cooke (p. 5), "rights of common were known to our oldest text-writers nearly as they are known to us at this day. Bracton, one of the earliest and most venerated of these, wrote upon the subject in the 13th century." In France we find an ordinance of Philip the Bold in A.D. 1280 regulating forest rights, and in Germany the term "forest" acquired its modern signification, or something like it, as far back as the days of Charlemagne (Roth, p. 46).

law: no doubt also other "forest" would be as clearly private property, and therefore not (except in particular cases) to be interfered with; but between these two well defined extremes, there would be found estates represented by considerable areas of waste and "jungle," which are in a manner, or to a certain extent, the property of Government, but on which so many conflicting interests have been allowed to grow up, that, *in statu quo*, it is very difficult to say whether they should be classed as Government forest, as communal forest, as private forest, or what.

We have therefore given up the attempt to define forest because it is impracticable. The real task of Indian forest law is to legalise, and of the Administration to carry into practice, a procedure by which the rights of the State and of other persons, may be sifted, separated, and adequately provided for, so that a series of forest estates, to which the forest law shall apply, may be *constituted*, or eliminated out of the somewhat chaotic conditions that actually subsist.

Some of these lands will be clearly Government or State forests; others will probably resolve themselves into forests owned by villages or communities, but subject to the law—managed or supervised by the State, and incapable of being partitioned and broken up; others may remain joint properties, managed by the State, the due share of the profits being paid over to the other sharers.

All estates developed under the procedure prescribed by the Act will then be naturally and unmistakeably subject to its provisions, without any need of enquiring precisely what is the definition of a "forest."

§ 2.—*Difference between Indian and European laws.*

Here we are introduced at once to a difference between Indian and European law, which will not fail to strike any one who has, for example, read the French Forest Code.

In the countries where the whole area of each province is occupied and owned, where every acre has been the object of careful

cadastral survey, and where all landed property has, according to the different laws in force, been classified and registered, there cannot be a moment's doubt about the nature or situation of a forest or any other estate[8]. There is no possibility of doubting to what class any given land belongs. The whole area of every district is as definitely classified as the white and black squares of a chess-board. There is not an acre but it can at once be said, this is arable land, the property of so and so; this is the forest of village A or of hospital B; this is a royal moor, and so on. It has long been known and registered as such. The forest law can then at once start by classifying the forests according to the proprietary right over them. No definition of "forests" is then necessary, and this is why none appears in any of the laws, as already stated.

Thus the French Code opens in the following manner:—

"Art. I.—Subject to the forest *régime*, and to be managed conformably to the provisions of this Code, are:—

(1) State forests[9].

(2) Forests belonging to 'communes' or sections of communes.

(3) Forests belonging to public institutions (schools, hospitals, &c.)

(4) Forests in which the State, or a commune, or a public institution, has undivided rights along with private individuals (*forêts indivis*).

[8] The Italian forest law offers to some extent an exception; but this is partly owing to the fact that there are hardly any State forests, partly also to the fact that the law aims at securing not only management of forests so as to secure a supply of timber of good dimensions, but also the protection of the country from a "climatic" point of view. The law applies therefore to *all* forests in *mountain ranges* within a certain zone. Here, of course, high forest or mere bush may both have their importance; consequently, the law does not speak of forests as specific "properties," as estates of one kind or another, but as *lands* "clothed with woody-stemmed vegetation."—(Art I, Law of 20th June 1877.)

[9] These are in the text of the Code classified into three kinds, depending on the early history of State forests. This distinction is omitted as having no interest for the Indian student.

"Art. II.—Private forest owners may exercise all rights resulting from their proprietary title, subject only to such restrictions as are specifically provided in this Code."

This clearly implies that all these kinds of forest are in existence and are well-known properties. The utmost that is required is the occasional definition of a boundary, or the regulation or buying out altogether (as the case may be) of rights which burden any particular forest.

If the law desires to go further, or deal with some special case, such as to plant sandy dunes, or restore the denuded areas in mountain districts, such areas are provided for by special law, or are specially declared subject to the forest law.

In the instance given (the French law), the State undertakes the management of communal forests as well as its own.

In other countries the law starts with a similar well-known and existing classification of forest estates, though all of them may not be subject to the same State control. Thus, in the Bavarian law, forests are classified as (1) State forests (*Staats Waldungen*), and (2) forests under State supervision (*Curatel Waldungen*). The latter class comprises forests belonging to communities (*Gemeinde Waldungen*), to corporations (*Körperschafts Waldungen*), and to public institutions (*Stiftungs Waldungen*).

Such a method of starting would be quite impossible in India. Our forests have not yet been separately crystallised out of the elementary mass of jungle lands.

We have, as I said, still to create or constitute the different forest properties, or, in other words, to put things in train, so that the different classes of forest may grow up or develop themselves.

The answer, then, to the question at the head of this section may so far be given that it may be said:—the forest law only applies to those estates which are constituted, or become, forest estates of one kind or another, under its provisions.

But it still remains further to be explained what lands are available to be constituted forest estates.